

CALIFORNIA STATE PERSONNEL BOARD MEETING  
801 Capitol Mall  
Sacramento, California

[www.spb.ca.gov](http://www.spb.ca.gov)

Public Session Location - Room 150  
Closed Session Location - Room 141

MID-MONTH BOARD MEETING MINUTES

OCTOBER 17, 2000

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

1. ROLL CALL

BOARD MEMBERS PRESENT:

Florence Bos, President  
Ron Alvarado, Vice President  
Richard Carpenter, Member  
William Elkins, Member

2. REPORT OF THE EXECUTIVE OFFICER - Walter Vaughn

The Board was advised of the following:

- A. Senator Burton has requested an audit of personnel Practices at the Veteran's Home in Barstow.
- B. The high volume Office Assistant examination is available continuously through the State Personnel Board computerized test center as well as through conventional testing on October 23, 2000, at the Sacramento Convention Center and November 7, 2000, at Cal Expo.

- C. Staff attended the International Personnel Management Association conference in San Francisco.

3. REPORT OF THE CHIEF COUNSEL - Elise Rose

The Chief Counsel reported on:

In the News

- A. Barnett v. US Air, Inc.- In a published decision, the Ninth Circuit Court of Appeal has issued a significant decision interpreting the Americans With Disabilities Act. The Court made several significant findings. First, the Court held that a "qualified individual with a disability" includes individuals who could perform the essential functions of a reassignment position, with or without reasonable accommodation, even if they cannot perform the essential functions of the current position. Additionally, the Court held that the interactive process is a mandatory rather than a permissive obligation on the part of employers under the ADA, that this obligation is triggered by an employee giving notice of the employee's disability and the desire for accommodation. In circumstances in which the employee is unable to make such a request, if the company knows of the existence of the disability, the employer must assist in initiating the interactive process. The Court further held that employers who fail to engage in the interactive process in good faith face liability for the remedies imposed by the statute if a reasonable accommodation would have been possible. Finally, the Court held that reassignment is a reasonable accommodation and that a seniority system is not a per se bar to reassignment, although it is a factor in the undue hardship analysis.

Litigation

- B. Edgerton, I.U.O.E.. v. State Personnel Board - In a published decision, Court of Appeal, First District, has overturned the Board's decision sustaining the

termination of Edgerton based on a positive drug test. The Court sustained the trial court's ruling that the positive test result was inadmissible based on Caltrans' failure to prove the chain of custody for the internal handling of the urine specimen by the testing laboratories. The Medical Review Officer (MRO) had certified the chain of custody as complete, notwithstanding that he never reviewed any chain of custody documentation for the laboratories' internal handling of the sample. The Court also sustained the trial court's granting of an injunction prohibiting Caltrans from conducting off-duty drug testing, finding that the off-duty testing intruded upon an employee's constitutionally protected right of privacy. Finally, the Court sustained the trial court's award of attorney's fees to IUOE under the private attorney general statute, finding that a multiplier of 1.5 was appropriate based on the novelty of the issues, the intransigent opposition of Caltrans, the excellent results achieved and the importance of the privacy rights vindicated.

Caltrans has filed a petition for rehearing, which argues that the court's ruling that the MRO is obligated to review the internal chain of custody is incorrect as a matter of law and fact. Caltrans also challenges the attorney fee award.

- C. Opinion of the California Attorney General re Effect of Amendment of Labor Code Section 96 - The California Attorney General has issued a published opinion on the following issue:

Did the recent amendment of Labor Code section 96, which requires the Labor Commissioner to take assignments of claims for loss of wages as a result of demotion, suspension, or discharge from employment for lawful conduct occurring during non-working hours, abrogate existing law that permits the disciplining of peace officers for off-duty conduct occurring away from their place of employment that is otherwise lawful but conflicts with their duties as peace

officers?

The Attorney General concluded that the recent amendment did not abrogate existing law that supports discipline against peace officers for engaging in off-duty conduct that was otherwise lawful but conflicted with their duties as peace officers. In reaching this conclusion, the Attorney General noted that the legislative history of the amendment did not support a finding that the amendment was intended to affect substantive rights of employees, but only to provide a supplemental procedure for asserting employee claims for which the legal basis already existed elsewhere in the law. The Attorney General also noted that this interpretation prevents possible conflicts between section 96 and other statutory provisions, specifically Government Code 19572 which provides for discipline of state employees for off-duty conduct that causes discredit to the employer and section 19990 which provides for discipline of state employees for engaging in incompatible activities. Finally, the Attorney General noted that this interpretation also avoids possible conflict between section 96 and Article VII of the California Constitution which charges the State Personnel Board with the constitutional responsibility of reviewing discipline.

- D. Sanchez v. State Personnel Board - In an unpublished decision, the Court of Appeal, Fourth District, upheld the Board's sustaining of a dismissal in this case involving an employee charged with making threats. The decision overturns a superior court ruling that had found the Board's decision unsupported by substantial evidence and the penalty of dismissal excessive.

Other

A. Precedential Decisions

Board's class on Precedential Decisions continues to get excellent reviews by participants.

B. State Employee Mediation Program

Tomorrow the State Employee Mediation Program presents an informational seminar about the program.

BOARD ACTIONS

5. STATE PERSONNEL BOARD SUMMARY MINUTES OF OCTOBER 3-4,  
2000

ACTION: Adopted on October 17, 2000.

VOTE: Bos, Alvarado, Carpenter, Elkins - Aye.

6. ACTION ON SUBMITTED ITEMS

ACTION: (See pages 14-15)

7. ADMINISTRATIVE LAW JUDGE CASES

On October 4, 2000, the Board adopted the following decisions presented by Elise Rose, Chief Counsel, California State Personnel Board.

VOTE: Bos, Alvarado, Carpenter, Elkins - Aye.

PROPOSED DECISIONS

LISA PEINADO, CASE NO. 00-1560

Appeal from demotion

Department of Social Services

ACTION: Demotion sustained

JEROME URBAN, CASE NO. 00-2137

Appeal from official reprimand

Department of Corrections

ACTION: Official Reprimand sustained

ANDREAS HAHN, CASE NO. 00-2294

Appeal from 5 percent reduction in salary for 6 months

Department of Corrections

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ACTION: Modified reduction in salary to Official  
Reprimand

JILL MCNAMARA, CASE NO. 98-4252

Appeal from dismissal

Department of California Highway Patrol

ACTION: Administrative Law Judge's Proposed Decision  
rejected by Board. Board to decide case itself.

KRISTINA HUTCHINGS, CASE NO. 00-0353

Appeal from 5 percent reduction in salary for 6 pay  
periods

State Board of Equalization

ACTION: Reduction in salary sustained

ROSEBUD PULIDO, CASE NO. 00-1124

Appeal from 5 percent reduction in salary for 6 months

Board of Equalization

ACTION: Reduction in salary sustained

JOHN R. HALL, CASE NO. 00-1360

Appeal from dismissal

Department of the Youth Authority

ACTION: Dismissal revoked

PETITIONS FOR REHEARING

JOHN WALTER, CASE NO. 99-2775

Appeal from dismissal

Department of Corrections

Petition for rehearing filed by respondent denied

CHARLES M. MCCORMICK, CASE NO. 00-0142

Appeal from 14 working days suspension

Employment Development Department

Petition for rehearing filed by appellant denied

MICHAEL E. BRADLEY, CASE NO. 99-3187

Appeal for reinstatement after automatic resignation

California State University, Long Beach

Petition for rehearing filed by respondent granted

LAWRENCE C. RAYNOR, CASE NO. 98-4853

Appeal from dismissal  
Department of Corrections  
Petition for rehearing filed by appellant denied

MARK SPECTOR, CASE NO. 00-0363  
Appeal from dismissal  
Department of Departmental Services  
Petition for rehearing filed by appellant granted

RUSSELL KOHR, CASE NO. 00-0844  
Appeal from 30-calendar day's suspension  
Department of Mental Health  
Petition for rehearing filed by appellant granted

8. RESOLUTION RE NOTICE OF GOVERNMENT CODE SECTION 18671.1  
EXTENSION.

ACTION: (See pages 16-18)

9. MISCELLANEOUS APPEALS DIVISION CASES  
Withholds, Voided Appointments, Rule 211 Appeals,  
Petitions for Rehearing)  
On October 17, 2000, the Board adopted the following  
decisions presented by Linda Brooks, Assistant Executive  
Officer, California State Personnel Board.  
VOTE: Bos, Alvarado, Carpenter, Elkins - Aye.

WITHHOLD CASES

- A. JOENETO BARRERA, CASE NO. 00-0222  
Classification: Hospital Peace Officer  
State Personnel Board  
ACTION: GRANTED
- B. MARGARET ROBLES, CASE NO. 00-1512  
Classification: Youth Correctional Officer  
Department of the Youth Authority  
ACTION: DENIED
- C. MICHAEL J. BRAVO, CASE No. 00-1859  
Classification: Correctional Officer  
Department of Corrections  
ACTION: DENIED

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- D. ALEJANDRO HERNANDEZ, CASE NO. 99-5305  
Classification: Correctional Officer  
Department of Corrections  
ACTION: DENIED
- E. MARK ICENOGLE, CASE NO. 00-1650  
Classification: Correctional Officer  
Department of Corrections  
ACTION: DENIED
- F. CHRISTINE KRUG, CASE NO. 00-1816  
Classification: Correctional Officer  
Department of Corrections  
ACTION: DENIED
- G. DARRYL LINER, CASE NO. 00-1651  
Classification: Correctional Officer  
Department of Corrections  
ACTION: DENIED
- H. ANGELA McLEAN, CASE NO. 00-1755  
Classification: Correctional Officer  
Department of Corrections  
ACTION: DENIED
- I. BARBIE MORENO, CASE NO. 00-1916  
Classification: Youth Correctional Officer  
Department of the Youth Authority  
ACTION: DENIED
- J. DANIEL R. RIOS, CASE NO. 00-1967  
Classification: Correctional Officer  
Department of Corrections  
ACTION: DENIED
- K. JOSE L. SANCHEZ, JR., CASE NO. 99-1231  
Classification: Facilities Environmental Audit  
Technician  
Department of Developmental Services  
ACTION: DENIED
- L. KENNETH D. WILLIAMS, CASE NO. 99-5268  
Classification: Cadet, CHP  
California Highway Patrol



ACTION: DENIED

10. MEDICAL APPEALS

On October 17, 2000, the Board adopted the following decisions presented by Linda Brooks, Assistant Executive Officer, California State Personnel Board.

VOTE: Bos, Alvarado, Carpenter, Elkins - Aye.

A. CHAD COLLOPY, CASE NO. 00-0556  
Classification: Special Agent, DOJ  
Department of Justice  
ACTION: DENIED

B. LEE R. GUERRA, CASE NO. 00-0803  
Classification: Parole Agent I, Adult Parole  
Department of Corrections  
ACTION: DENIED

C. LARA ANDERSON, CASE NO. 00-2879  
Classification: Correctional Officer  
Department of Corrections  
ACTION: GRANTED

D. TERRY WILLARD, CASE NO. 00-2464  
Classification: Fire Fighter, CF  
Department of Corrections  
ACTION: DISMISSED

11. EXAMINATION APPEALS

On October 17, 2000, the Board adopted the following decisions presented by Linda Brooks, Assistant Executive Officer, California State Personnel Board.

VOTE: Bos, Alvarado, Carpenter, Elkins - Aye.

A. SYLVIA VALVERDE, CASE NO. 99-1520  
BARBARA A. DITTMER, CASE NO. 99-1527  
Classifications: Staff Services Manager I  
State Personnel Board  
ACTION: DENIED the general appeal, GRANTED request for test paper and answer sheet inspection.

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12. REQUEST TO FILE CHARGES CASES

On October 17, 2000, the Board took the following actions presented by Linda Brooks, Assistant Executive Officer, California State Personnel Board.

VOTE: Bos, Alvarado, Carpenter, Elkins - Aye.

A. ARMOND DOVAL, CASE NO. 00-0797

Classification: Programmer II

Department of General Services

ACTION: DENIED

B. MINNIE D. MCGRANE, CASE NO. 00-0268

Classification: Health Program Auditor III

Department of Health Services

ACTION: DENIED

C. STEPHEN SCHUMANN, CASE NO. 00-1237

Classification: A member of the general public.

Department of Transportation

ACTION: DENIED

13. NON-HEARING CALENDAR

On October 4, 2000, the Board adopted item "A". This item was presented by Walter Vaughn, Executive Officer of the California State Personnel Board.

VOTE: Bos, Alvarado, Carpenter, Elkins - Aye.

A. WITHDRAWN

14. CAREER EXECUTIVE ASSIGNMENT (CEA) CATEGORY ACTIVITY

A. REQUESTS TO ESTABLISH NEW CEA POSITIONS CURRENTLY UNDER CONSIDERATION

(1) ASSISTANT DEPUTY DIRECTOR, ADMINISTRATIVE RESOURCES BRANCH

The Department of Child Support Services proposes to allocate the above position to the CEA category. The Assistant Deputy Director, Administrative Resources Branch is responsible for the development, implementation and continuous improvement of services, policies,

procedures and strategies in the areas of personnel, staff development coordination, labor relations, health and safety, and other support services. The department indicates that the position is at the third organizational level and will report directly to the Deputy Director, Administrative Services Division.

(2) ASSISTANT DEPUTY DIRECTOR, FINANCIAL SERVICES  
BRANCH

The Department of Child Support Services proposes to allocate the above position to the CEA category. The Assistant Deputy Director, Financial Services Branch is responsible for the development and maintenance of a fiscal support system, including preparation of the Governor's Budget, monitoring and control of appropriations, programs financial integrity, cash flow analysis, CALSTARS maintenance, and county allocations and administrative claiming policies for the program. The department indicates that the position will be at the third organizational level and will report directly to the Deputy Director, Administrative Services Division.

(3) ASSISTANT DEPUTY DIRECTOR, TECHNOLOGY SERVICES  
DIVISION

The Department of Child Support Services proposes to allocate the above position to the CEA category. The Assistant Deputy Director, Technology Services Division is responsible for assisting the Deputy in the policy development and implementation associated with information technology for both existing interim county child support systems, departmental automation systems, and the departmental computing infrastructure. The department indicates that the position will be at the third organizational level and will report directly to the Deputy Director, Technology Services Division.

(4) ASSISTANT DEPUTY DIRECTOR, CHILD SUPPORT  
SERVICES  
DIVISION

The Department of Child Support Services proposes to allocate the above position to the CEA category. The Assistant Deputy Director, Child Support Services Division will support the Deputy Director in policy development and implementation in the major policy initiative established in the child support reform legislation. The department indicates that the position will be at the third organizational level and will report directly to the Deputy Director, Child Support Services Division.

(5) CHIEF, POLICY DEVELOPMENT BRANCH, CHILD SUPPORT SERVICES DIVISION

The Department of Child Support Services proposes to allocate the above position to the CEA category. The Chief, Policy Development Branch will be directly responsible for three sections: Policy, Training and Statewide Automation Consulting. The department indicates that the position will be at the fourth organizational level and will report to the Assistant Deputy Director, Child Support Services Division.

(6) CHIEF, COUNTY SUPPORT BRANCH, CHILD SUPPORT SERVICES DIVISION

The Department of Child Support Services proposes to allocate the above position to the CEA category. The Chief, County Support Branch will be directly responsible for the Program Review, Technical Assistance and Statewide Initiatives Sections. The department indicates that the position will be at the fourth organizational level and will report directly to the Assistant Deputy Director, Child Support Services Division.

(7) CHIEF, FIELD SERVICES DIVISION

The Department of Parks and Recreation proposes to allocate the above position to the CEA category. The Deputy Director, Park Operations, the Chief Field Services Division plans, organizes, directs and provides policy and technical oversight for the department's statewide Public Safety, Telecommunications, and

Technical Services Programs, and additionally, supervises the Administrative Support Unit that provides services to all six divisions within the Park Operations headquarters organization. The department indicates that the position will be at the third organizational level and will report directly to the Deputy Director, Park Operations.

(8) DEPUTY ASSISTANT SECRETARY FOR BOND AND GRANT IMPLEMENTATION

The California Resources Agency proposes to allocate the above position to the CEA category.

The Deputy Assistant Secretary for Bond and Grant Implementation will be responsible for ensuring adequate fiscal policy and controls to ensure successful distribution of bond funds. The department indicates that the position will be at the third organizational level and will report directly to the Assistant Secretary for Finance and Administration.

(9) CHIEF FINANCIAL OFFICER

The California Health and Human Services Agency Data Center proposes to allocate the above position to the CEA category. The Chief Financial Officer is responsible for managing the development and implementation of cost measurement practices, rate setting methodologies, rate structures, and customer billing practices. The department indicates that the position is at the third organizational level and will report directly to the Deputy Director, Administrative Services Division.

B. REQUESTS TO ESTABLISH NEW CEA POSITIONS

(1) ASSISTANT DIRECTOR, FINANCIAL SOLVENCY STANDARD BOARD

The Department of Managed Care's request to allocate the above position to the above category has been approved effective September 1, 2000.

(2) ASSISTANT PATIENT ADVOCATE

The Department of Managed Health Care's request to allocate the above position to the CEA category has been approved effective September 13, 2000.

(3) CHIEF, LEGISLATION, POLICY AND PROGRAMS  
DEVELOPMENT BRANCH

The State Board of Control's request to allocate the above position to the CEA category has been approved effective September 21, 2000.

(4) DEPUTY SUPERINTENDENT FOR EDUCATION, EQUITY,  
ACCESS AND SUPPORT

The Department of Education's request to allocate the above position to the CEA category has been approved effective September 21, 2000.

C. REQUESTS TO REFILL CEA POSITIONS ESTABLISHED BETWEEN  
6/30/95 AND 1/1/99

(1) DEPUTY EXECUTIVE OFFICER, QUALITY ASSURANCE AND  
REVENUE RECOVERY DIVISION

The State Board of Control is requesting to refill the above position.

(2) CHIEF, PROGRAM AND DEVELOPMENT AND MANAGEMENT  
DIVISION

The Employment Development Department is requesting to refill the above position.

D. EXECUTIVE OFFICER DECISIONS REGARDING REQUESTS TO  
REFILL CEA POSITIONS ESTABLISHED BETWEEN 6/30/95 AND  
1/1/99

(1) CHIEF, INFORMATION SYSTEMS & SERVICES OFFICE

The Department of Water Resources request to refill the above position has been approved effective September 27, 2000.

ACTION: Noted

A D J O U R N M E N T

October 17, 2000

SUBMITTED

1. COMPETITIVE CEA EXAMINATIONS  
PROPOSAL TO AMEND EXISTING RULE 548.40 TO COMPLY WITH THE  
FINDING IN ALEXANDER V SPB THAT CEA EXAMINATION  
CANDIDATES MUST BE RANKED AND COMPARED AGAINST THE  
RELEVANT QUALIFICATIONS FOR THE POSITION AND ALSO AGAINST  
EACH OTHER. (Hearing held July 6, 2000).

ACTION: Adopted resolution with amendment on October 17,  
2000.

(See pages 20-23)

VOTE: Bos, Alvarado, Carpenter and Elkins - Aye.

2. DEPUTY COMMISSIONER, BOARD OF PRISON TERMS (SAFETY)  
(Hearing held August 1, 2000).

ACTION: On October 17, 2000, Board adopted resolution  
(See pages 24-26, and Exhibit 1 which is attached)

VOTE: Bos, Alvarado, Carpenter and Elkins - Aye.

3. M. BRENT EDWARDS, CASE NO. 99-4422. Appeal from  
constructive termination. Department of Mental Health.  
(Oral argument held September 6, 2000).

NO ACTION

4. GABRIEL HERNANDEZ, CASE NO. 98-2868. Appeal from  
dismissal. Department of Mental Health. (Oral argument  
held  
September 6, 2000).

NO ACTION

5. WILLIAM SULLIVAN, CASE NO. 99-3904. Appeal from  
dismissal. Department of Corrections. (Oral argument  
held  
September 6, 2000).

NO ACTION



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6. CHRISTOPHER RAMOS, CASE NO. 99-0458P. Appeal from 5 percent reduction in salary for 6 months. Department of Corrections.  
(Oral argument held September 6, 2000).

NO ACTION

7. REGINALD SMITH, CASE NO. 00-0312. Appeal from 30-calendar day's suspension. Department of Corrections.  
(Oral argument held October 3, 2000).

NO ACTION

8. MICHAEL CALLOWAY, CASE NO. 99-1041. Appeal from dismissal. Department of Developmental Services. (Oral argument held October 4, 2000).

NO ACTION

9. ERNEST LEON, CASE NO. 99-1078. Appeal from dismissal. Department of Corrections. (Oral argument held October 4, 2000).

NO ACTION

**NOTICE OF GOVERNMENT CODE § 18671.1 RESOLUTION**

Since Government Code section 18671.1 requires that cases pending

before State Personnel Board Administrative Law Judges (ALJ's) be completed within six months or no later than 90 days after submission of a case, whichever is first, absent the publication of substantial reasons for needing an additional forty-five days, the Board hereby publishes its substantial reasons for the need for the forty-five day extension for some of the cases now pending before it for decision.

An additional forty-five days may be required in cases that require multiple days of hearings, that have been delayed by unusual circumstances, or that involve any delay generated by either party (including, but not limited to, submission of written briefs, requests for settlement conferences, continuances, discovery disputes, pre-hearing motions). In such cases, six months may be inadequate for the ALJ to hear the entire case, prepare a proposed decision containing the detailed factual and legal analysis required by law, and for the State Personnel Board to review the decision and adopt, modify or reject the proposed decision within the time limitations of the statute.

Therefore, at its next meeting, the Board will issue the attached resolution extending the time limitation by 45 days for all cases that meet the above criteria, and that have been before the Board for less than 6 months as of the date of the Board meeting.

**GOVERNMENT CODE § 18671.1 RESOLUTION**

**WHEREAS**, Section 18671.1 provides that, absent waiver by the appellant, the time period in which the Board must render its decision on a petition pending before it shall not exceed six months from the date the petition was filed or 90 days from the date of submission; and

**WHEREAS**, Section 18671.1 also provides for an extension of the time limitations by 45 additional days if the Board publishes substantial reasons for the need for the extension in its calendar prior to the conclusion of the six-month period; and

**WHEREAS**, the Agenda for the instant Board meeting included an item titled "Notice of Government Code § 18671.1 Resolution" which sets forth substantial reasons for utilizing that 45-day extension to extend the time to decide particular cases pending before the Board;

**WHEREAS**, there are currently pending before the Board cases that have required multiple days of hearing and/or that have been delayed by unusual circumstances or by acts or omissions of the parties themselves;

**NOW, THEREFORE, BE IT RESOLVED AND ORDERED** that the time limitations set forth in Government Code section 18671.1 are hereby extended an additional 45 days for all cases that have required multiple days of hearing or that have been delayed by acts or omissions of the parties or by unusual circumstances and that have been pending before the Board for less than six months as of the date this resolution is adopted.

\* \* \* \* \*

I hereby certify that the State Personnel Board made and adopted the preceding resolution at its meeting on October 17, 2000.

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WALTER VAUGHN  
Executive Officer  
California State Personnel Board

VOTE: Bos, Alvarado, Carpenter, Elkins - Aye.

**WHEREAS**, on April 28, 2000, the California Court of Appeal for the Third Appellate District issued a published decision in Alexander v. State Personnel Board,<sup>1</sup> which invalidated Board Rule 548.40,<sup>2</sup> finding that the rule violated the merit principles set forth in Article VII of the California Constitution because it did not require the ranking and comparing of candidates who took examinations for Career Executive Assignment (CEA) positions;

**WHEREAS**, by notice dated June 15, 2000, the State Personnel Board (Board) informed all state agencies and employee organizations of its intention to amend Board Rule 548.40 to comply with Alexander, and invited all interested parties to comment upon the Board's proposed amendment;

**WHEREAS**, on July 6, 2000, the Board held a public hearing to receive oral and written comments on its proposed amendment to Board Rule 548.40;

**WHEREAS**, by notice dated September 21, 2000, the Board informed all state agencies and employee organizations that, after reviewing the public comments it had received, it was

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<sup>1</sup> (2000) 80 Cal.App.4th 526 (Alexander).

<sup>2</sup> California Code of Regulations, Title 2, Section 548.40.

proposing to modify further its proposed amendment to Board Rule 548.40, and welcomed additional written public comments;

**BE IT THEREFORE RESOLVED** that, after considering all the oral and written public comments it has received, the State Personnel Board hereby adopts the amendment to Board Rule 548.40 as set forth on Attachment 1.

\* \* \* \* \*

The foregoing resolution was made and adopted by the State Personnel Board at its meeting on October 17, 2000 as reflected in the record of the meeting and Board minutes.

[CEA exam res.doc]



October 17, 2000

For this amendment, text added to the regulation is indicated by underline and text deleted from the regulation is indicated by strikethrough.

**Section 548.40 is amended to read:**

**§ 548.40. Competitive Examinations.**

Examinations for appointment to Career Executive Assignment positions shall be competitive and of such a character as fairly to test and determine the qualifications, ~~fitness and ability of competitors of candidates~~ actually to perform the duties of the position to be filled. Examinations may include, but need not be limited to, an assessment of the candidates' character, education, experience, knowledge, skills, and ability. Examinations may be assembled or unassembled, written or oral, or in the form of a demonstration of skill, or any combination of these. ~~and an investigation of character, personality, education and experience and any tests of intelligence, capacity, technical knowledge, manual skills, or physical fitness which the appointing power subject to the approval of the executive officer deems are appropriate, may be employed.~~

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~~It is the purpose of this selection system to provide examination options that are particularly suited to fill efficiently each vacant position. Examination results need not be expressed in specific ratings of individuals. The person appointed as a result of a competitive examination must be well qualified and carefully selected. The appointing power is required to promulgate the qualifications that will be used as standards in conducting the examination but is not required to distinguish between groups or individuals as to who is qualified or not qualified or as to relative level of qualification. Examinations may range from (1) include a review of applications, from which a selection is made, to (2) the use of supplemental applications, appraisals of performance and executive potential, management exercises, and/or structured interviews.~~

The appointing power shall promulgate the job-related evaluation criteria that will be used to assess the qualifications of each candidate for the position. The appointing power shall assess each candidate's qualifications for the position based upon the evaluation criteria, and shall compare and rank each candidate against all other candidates based upon this assessment. Successful candidates shall be divided into 6 ranks based upon their scores. The first rank shall consist of candidates who receive scores of 95 percent or higher. The second rank shall consist of candidates who receive scores of 90 to 94 percent. The third rank shall consist of candidates who receive scores of 85 to 89 percent. The fourth rank shall consist of candidates who receive scores of 80 to 84 percent. The fifth rank shall consist of candidates who receive scores of 75 to 79 percent. The sixth rank shall consist of candidates who receive scores of 70 to 74 percent. Unsuccessful candidates shall receive a score of 65. All examination scores shall be rounded to the nearest

whole percent. Each candidate shall be notified in writing of his or her score.

The appointing power shall appoint a candidate who is well-qualified to perform the duties of the position, and who is within one of the top three ranks. If there are fewer than a total of 5 candidates in the top three ranks, then the appointing power may consider candidates in the next lower ranks in rank order until there are least 5 candidates available for consideration. For each examination, the appointing power shall maintain an examination file for a period of three years that includes, but is not limited to, the specific job-related evaluation criteria and selection procedures that were used in the examination; documentation on how those criteria were applied to the candidates; documentation as to the competitiveness of the candidates' qualifications relative to each other; and the appointing power's rationale for selecting the successful candidate.

Note: Authority cited: Section 18701, Government Code.  
Reference: Sections 18546, 19889, 19889.2 and 19889.3, Government Code; and *Alexander v. State Personnel Board* (2000) 80 Cal.App.4th 526.

**RESOLUTION RE: DEPUTY COMMISSIONER, BOARD OF PRISON  
TERMS (SAFETY)**

**WHEREAS**, the State of California and the Association of California State Attorneys and Administrative Law Judges (ACSA) have entered into a Memorandum of Understanding (MOU) for the period July 1, 1999 through July 2, 2001 covering employees in Bargaining Unit 2;

**WHEREAS**, section 14.5 of the Unit 12 MOU provides:

The parties agree that the provisions of Government Code sections 19816.20 and 20405.1 shall apply to Unit 2.

**WHEREAS**, Government Code section 19816.20 made applicable to bargaining units that have agreed to its provisions in their MOU, authorizes the Department of Personnel Administration (DPA) to determine which classes or positions in the

bargaining unit meet the criteria for the state safety category of membership in the Public Employees' Retirement System;

**WHEREAS**, section 14.6 of the Unit 2 MOU provides:

The Department of Personnel Administration shall notify the Public Employees Retirement System that employees in the new Deputy Commissioner, Board of Prison Terms, classification satisfy the criteria for safety membership, provided that: (a) Government Code sections 19816.20 and 20405.1 are amended to include Unit 2 as provided in Section 14.5 of this agreement; and (b) the State Personnel Board adopts the new Deputy Commissioner, Board of Prison Terms, classification as provided for in Section 15.5 of this agreement.

**WHEREAS**, section 15.5 of the Unit 2 MOU provides, in relevant part:

The Board of Prison Terms and the Department of Personnel Administration agree to develop a new Deputy Commissioner classification to be submitted to the State Personnel Board for its consideration and approval. ...

**WHEREAS**, on or about June 20, 2000, the Department of Personnel Administration (DPA) submitted to the Board a proposal for the establishment of a new classification of Deputy Commissioner, Board of Prison Terms (Safety);

**WHEREAS**, at its meeting on August 1, 2000, the Board held a public hearing to consider the request to establish a new Deputy Commissioner, Board of Prison Terms (Safety) classification (a copy of the materials submitted to and considered by the Board at that meeting are attached as Exhibit 1 hereto);

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**WHEREAS**, following the public hearing on August 1, 2000, the Board received a memorandum from the DPA describing proposed changes to the proposed class specification and providing other clarifying information (a copy of that memorandum is attached as Exhibit 2 hereto);

**WHEREAS**, the State Personnel Board has exclusive jurisdiction to prescribe, create and adjust classifications pursuant to Article VII, section 3(a) of the California Constitution and Government Code sections 18702 and 18802;

**WHEREAS**, Government Code section 18523 provides:

"Class" means a group of positions sufficiently similar with respect to duties and responsibilities that the same title may reasonably and fairly be used to designate each position allocated to the class and that substantially the same tests of fitness may be used and that substantially the same minimum qualifications may be required and that the same schedule of compensation may be made to apply with equity.

**WHEREAS**, the information provided to the Board does not establish that the duties and responsibilities of the proposed new class are substantially different from those of the existing class of Deputy Commissioner, Board of Prison Terms, so as to justify creation of a new class;

**WHEREAS**, the description of the special physical characteristics required for members of the proposed class could necessitate a higher level of medical screening and could result in the rejection of otherwise qualified applicants;

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**WHEREAS**, the creation of a new class is not required in order for the parties to negotiate and implement safety retirement benefits on behalf of designated Unit 2 employees.

**IT IS RESOLVED AND ORDERED THAT:**

1. the request of the Department of Personnel Administration for approval of the proposal for the establishment of a new classification of Deputy Commissioner, Board of Prison Terms (Safety) is denied;
2. this denial is without prejudice to the right of the parties to take further action to implement their agreement, that is not inconsistent with merit principles and that does not require creation of a new class, to implement safety retirement benefits for the class of Deputy Commissioner, Board of Prison Terms.

\* \* \* \* \*

The foregoing resolution was made and adopted by the State Personnel Board in at its meeting on October 17, 2000 as reflected in the record of the meeting and Board minutes.

**EXHIBIT 1**

TO: STATE PERSONNEL BOARD

FROM: Patricia Embly, Personnel Analyst  
Personnel Resources & Innovations Division

REVIEWED BY: John Jackson, Manager  
Personnel Resources & Innovations Division

SUBJECT: Proposed Establishment of Deputy Commissioner, Board of Prison  
Terms (Safety) Classification

REASON FOR HEARING:

To provide the Board with an opportunity to hear and consider issues associated with the request of the Board of Prison Terms (BPT) to establish a parallel Deputy Commissioner, Board of Prison Terms (Safety) classification in order to provide safety retirement benefits for eligible incumbents. The Department of Personnel Administration (DPA) and the Association of California State Attorneys (ACSA) support this request. Board staff have concluded that there is insufficient justification to support the establishment of a parallel classification.

SUMMARY OF ISSUES:

BPT proposes to establish the new classification of Deputy Commissioner, Board of Prison Terms (Safety) in order to allow incumbents to receive safety retirement.

Under the provisions of Government Code Section 19816.20, the Department of Personnel Administration (DPA) has the authority to determine which classifications or positions meet the elements of the criteria for membership in safety retirement and to provide safety retirement by memorandum of understanding (MOU). DPA does not, however, have the authority to establish new classifications for the purpose of implementing the terms of a MOU.

DPA agreed to providing safety retirement for the classification of Deputy Commissioner, Board of Prison Terms in the Unit 2 MOU effective July 1, 1999.

The State Personnel Board (SPB) has authority for prescribing classifications under the provisions of Section 3(a), Article VII of the Constitution and Government Code Section 18702.



#### CLASSIFICATION CONSIDERATIONS:

A classification already exists for Deputy Commissioner, Board of Prison Terms. All positions in the classification conduct hearings to determine term fixing, parole consideration, and parole revocation for those felons committed to the custody of the Director of Corrections and make decisions in cases heard; review and schedule cases for hearings; review prisoner and parolee appeals regarding BPT decisions and Department of Corrections decisions on good time credits and the length and conditions of parole; review the length and appropriateness of prison sentences imposed by the courts.

In order to justify the establishment of a parallel safety classification, BPT has requested that the "Typical Tasks" section of the classification specification be revised to include tasks such as maintaining order and supervising the conduct of inmates and parolees; assuming responsibility for custody; and intervening in instances of disruptive or assaultive behavior.

While proposing the addition of these tasks, BPT has not provided evidence that the duties and responsibilities of a Deputy Commissioner have changed in recent years. The additional tasks appear to be a reflection of the circumstances and conditions which have prevailed for the past several years.

When asked by staff to describe the security arrangements for hearing venues, BPT indicated the following:

Participants at most hearing venues include: 1) the Deputy Commissioner conducting the hearing; 2) the parolee, and; 3) the unarmed Parole Agent I [District Hearing Agent (DHA) for the California Department of Corrections (CDC)]. In occasional or exceptional settings, depending on the institution or geographic county, there may be another unarmed peace officer in the room. For example, an unarmed deputy sheriff is generally present in the hearing room at Sacramento County's Rio Cosumnes Correctional Center, because it is a county facility. But not all county facilities will have a deputy sheriff in the room.

The DHA escorts witnesses and parolees to and from the hearing room, which is in the "locked" area of the facility. Parolees are not always in restraints in hearing rooms. The CDC and/or the local sheriff offices have initial responsibility for security and make the initial determination whether the parolee will attend the hearing in restraints. The Deputy Commissioner has final responsibility for security in the room and can order an increase or decrease in restraints. In this hearing setting, the Deputy Commissioners have final responsibility for the security and protection in the hearing room, and as such they have regular control

and supervision and substantial contact with offenders in adult correctional facilities and mental facilities.

BPT has also requested that a "Special Physical Characteristics" section be added to the classification specification requiring that, "Persons appointed to positions in this class must be reasonably expected to have and maintain sufficient strength, agility, and endurance to perform during stressful (physical, mental, and emotional) situations encountered on the job without compromising their health and well being or that of their fellow employees or that of inmates or parolees."

Staff consulted with the State Medical Officer and determined that the addition of these special physical characteristics would require the application of a higher physical standard in reviewing the medical qualifications of an applicant and determining whether they are able to perform the duties of the job. In other words, if the application of physical restraint was a requirement of the job, a different medical standard would be applied than if the job was essentially sedentary in nature as is currently implied for this classification.

The application of a higher physical standard, in the absence of clear evidence and/or justification as to its job-relatedness and/or business necessity, could result in a discriminatory situation in which disabled individuals who are otherwise qualified would be disqualified from competing for positions in this classification.

Upon staff's request, BPT provided a compendium of incidents involving parole board staff which have occurred over the past 30 years. The compendium is attached. Staff notes that most of the incidents involve verbal threats and that in those relatively few cases where assaultive behavior is identified, there is no indication of the Deputy Commissioner's role in quelling the behavior.

The only clear justification staff has been able to identify for the need to establish a parallel safety classification is that such a classification would help to facilitate the tracking of personnel transactions involving employees in safety-approved positions. Consequently, if this proposal for a parallel safety classification is not adopted, alternative means will need to be considered to facilitate the efforts of the State Controller's Office, the Public Employees Retirement System and other agencies which must deal with the extensive paperwork required for tracking transactions involving safety retirement positions.

**CONCLUSION:**

Staff has concluded that there is insufficient evidence of a change in the duties and responsibilities of the Deputy Commissioner, Board of Prison Terms classification which would warrant the establishment of a parallel safety classification. Without such evidence, staff is concerned that the addition of the special physical characteristics could result in discrimination against otherwise qualified disabled applicants.

**RECOMMENDATION:**

That the request to establish a new classification of Deputy Commissioner, Board of Prison Terms (Safety) be denied.

June 20, 2000

TO: STATE PERSONNEL BOARD

FROM: Deborah Yue, Personnel Management Analyst  
Policy and Operations Division  
Department of Personnel Administration

REVIEWED BY: Frank Tanaka, Program Manager  
Department of Personnel Administration

SUBJECT: Proposed Establishment of Deputy Commissioner,  
Board of Prison Terms (Safety) Classification

## SUMMARY OF ISSUES:

The Board of Prison Terms (BPT) proposes the establishment of the new classification of Deputy Commissioner, Board of Prison Terms (Safety). This new classification will allow incumbents to come to the aid of others in a hearing situation, by actively assisting in the security or custody responsibilities that arise during hearings. Deputy Commissioners serve as single hearing officer panels, conducting face-to-face hearings for parole revocations and revocation extension hearings in county jails, state prisons, and state hospitals throughout California.

Currently, maintaining security is the responsibility of custodial law enforcement staff in the facilities where hearings are held. Since there are situations when custodial staff are not available, such as when they escort inmates and parolees to and from hearings, Deputy Commissioners have been the only administrative persons in hearing rooms. Documentation exists of assaults, incidents, and threats involving BPT staff. While a classification title already exists for Deputy Commissioner, Board of Prison Terms, duties have not included responsibility for maintaining order and security or for custody of inmates and parolees. Establishing a separate parenthetical class with safety related responsibilities would supplement security in hearing situations when no other custodial staff is available or when additional security assistance is required.

BPT proposes that establishment of this new class will result in incumbents being provided 12 months of split-off eligibility from the existing class to the new class. Reallocation to the new class will be based upon the incumbents' willingness and ability to assume the new responsibilities. All new hires will be made to the new class. Footnote 24 will be added to the existing class of Deputy Commissioner, Board of Prison Terms to abolish it when it becomes vacant.

## CONSULTED WITH:

Louie DiNinni, Executive Officer, BPT  
Jan Enloe, Assistant Executive Officer, BPT  
Kelly Mayfield, Chief, Administrative Services Section, BPT  
Linda Buzzini, Labor Relations Counsel/Officer, DPA  
Susan Tune, Personnel Management Analyst, DPA

In accordance with the terms of the DPA/Unit #2 contract, the Department of Personnel Administration has notified the union in writing of the proposal. This proposal was discussed during the 1999 Unit #2 negotiations. The union has agreed to the proposal's establishment, concept, and salary level.

CLASSIFICATION CONSIDERATIONS:

See Attached Proposal.

RECOMMENDATIONS:

1. That the class of Deputy Commissioner, Board of Prison Terms (Safety) be established; the proposed specification for the class as shown in this calendar be adopted; and the probationary period be 12 months.
2. That Footnote 24 be applied to the class of Deputy Commissioner, Board of Prison Terms to prevent further appointments to this class and to designate that it is to be abolished when it becomes vacant.
3. That the following resolutions be adopted:

WHEREAS the State Personnel Board on June 20, 2000 established the class of Deputy Commissioner, Board of Prison Terms (Safety) and the duties and responsibilities of this class are substantially included in the existing class of Deputy Commissioner, Board of Prison Terms; and

WHEREAS the knowledge and abilities required for the class of Deputy Commissioner, Board of Prison Terms (Safety) were substantially tested for in the examination for the class of Deputy Commissioner, Board of Prison Terms; Therefore be it

RESOLVED, That any person with civil service status in the class of Deputy Commissioner, Board of Prison Terms on June 20, 2000 holding a position or who, within a period of 12 months from the date of Board action accepts a position which is classified in the class of Deputy Commissioner, Board of Prison Terms (Safety) shall be deemed to have the same civil service status in that class without further examination; and be it further

RESOLVED, That any existing employment lists other than reemployment lists established for the class of Deputy Commissioner, Board of Prison Terms shall be used to certify to fill vacancies in the class of Deputy Commissioner, Board of Prison Terms (Safety) until such lists are abolished, exhausted, or superseded by lists for the class of Deputy Commissioner, Board of Prison Terms (Safety), and any persons on existing reemployment lists for the class of Deputy Commissioner, Board of Prison Terms shall also be placed on reemployment lists for the class of Deputy Commissioner, Board of Prison Terms (Safety) until the expiration of their eligibility on the reemployment lists for the class of Deputy Commissioner, Board of Prison Terms.

## B. CLASSIFICATION CONSIDERATIONS

Instructions: Complete only if Concept (Part A) approved by DPA. Include headings (Background, Classification Considerations, etc.) if using additional paper. Only complete applicable questions (i.e., provide enough information to support the proposal). Respond to each of these questions and return with signed-off transmittal to your DPA and SPB Analysts.

### BACKGROUND

1. Provide some historical perspective about the organizational setting of the subject class(es) and the needs that this request addresses.

Since 1960, the responsibilities of the paroling authority and its attendant organization have expanded and changed significantly. The United States Supreme Court decision Morrisey v. Brewer, 408 U.S. 471, 489 (1972), mandated due process procedures for probation and parole revocation and substantially impacted the Board of Prison Terms. The Board was thrust into a more direct public safety role by adjudicating parolee misconduct; thus providing either the most timely or sole sanctions faced by felons. Unitary hearings came about, sometimes leaving hearing officers as the sole law enforcement member present on occasion at hearings.

While provision of security is currently a responsibility of custodial law enforcement staff in the facilities where hearings are held, e.g., county jails, state prisons, and state hospitals throughout California, there are situations when the institution's custody staff is not available. An example of such a situation is when they escort inmates and parolees to and from hearings. Documentation exists of assaults, incidents, and threats involving BPT staff. Thus, public safety during a parole hearing is now a direct result of Deputy Commissioners performing a full range of attendant law enforcement duties.

A classification title already exists for Deputy Commissioner, Board of Prison Terms, but duties have not included responsibility for maintaining order and security or for custody of inmates and parolees. Establishing a separate parenthetical class with safety related responsibilities would supplement security in hearing situations when no other custodial staff is available or when additional security assistance is required.

### CLASSIFICATION CONSIDERATIONS

2. What classification(s) does the subject class(es) report to?

Associate Chief Deputy Commissioner, Board of Prison Terms

3. Will the subject class(es) supervise? If so, what class(es)?

No.

4. What are the specific duties of the subject class(es)?

Conducts parole revocation and revocation extension hearings, makes decisions on various calendars and takes emergency actions, reviews and makes decisions on parolee appeals, maintains order and supervises the conduct of inmates/parolees, responsible for custody and intervenes in instances of disruptive or assaultive behavior at hearings.

5. What is the decision-making responsibility of the subject class(es)?

Makes parole liberty decisions for inmates and parolees. Also, makes procedural and security decisions in administrative hearings, appeals, and miscellaneous processes. All decisions have public safety consequences.

6. What would be the consequence of error if incumbents in the subject class(es) did not perform their jobs? (Program problems, lost funding, public safety compromised, etc.)

Potential release of dangerous felons would compromise public safety. There is significant and direct correlation between released dangerous parolees and crime commission in society. In a parole hearing situation, consequence of error could include serious injury to the incumbent, the parolee or inmate, and any other persons in attendance.

7. What are the analytical requirements expected of incumbents in the subject class(es)?

They analyze and make rulings on administrative law procedures. They evaluate evidence, exhibits, testimony, professional evaluations, and applicable laws and regulations to effectively render decisions.

8. What are the purpose, type, and level of contacts incumbents in the subject class(es) make?

Incumbents are routinely in contact with attorneys, medical evaluators, correctional administrators and custody staff, law enforcement personnel, victims and their relatives, district attorneys, and others involved in the criminal justice/correctional system. These contacts are for the purpose of equitably and legally determining parole hearing outcomes. Incumbents also have contact with inmates and parolees as they conduct face-to-face hearings.

#### NEED FOR NEW CLASS (if necessary)

9. For New classes only: what existing classes were considered and why were they not appropriate?

No other classification in State service exists to address the required duties of these positions.

#### MINIMUM QUALIFICATIONS

10. What are the proposed or current minimum qualifications of the subject class(es), and why are they appropriate? (Include inside and outside experience patterns.)

Two years experience in custody, classification, treatment, or parole work at Parole Administrator I level. Three years at Parole Agent III level. Three years in administrative or criminal law comparable to a Staff Counsel, Range D. Three years of policy or procedure development at program management level in mental health, social work, law enforcement or county probation with education equivalent to college degree. Must have and maintain the applicable special personal and physical characteristics for the class.

#### PROBATIONARY PERIOD

☐ Six Months

11. If a probationary period other than six months is proposed, what is the rationale?

A twelve-month probationary period is appropriate as the incumbents are not subject to day-to-day evaluation as they are continuously performing fieldwork with limited direct, daily supervision. They need highly specialized knowledge to perform their duties properly and they operate with considerable independence. The existing class of Deputy Commissioner, Board of Prison Terms also has a 12 month probationary period.

#### STATUS CONSIDERATIONS (see additional information in Part D).

12. What is the impact on current incumbents?

Incumbents in the Deputy Commissioner, Board of Prison Terms class that are both willing and able to perform the duties and meet the requirements of the new classification will be given "split-off" eligibility for twelve months. The existing examination list will be used until abolished or exhausted.

13. Will current employees move by examination, transfer, reallocation, split-off, etc.? Explain rationale.

Split-Off Eligibility will be provided to those employees that assume the new duties within twelve months of Board action and have been appointed from a list developed by a competitive exam. It would be unnecessary and unfair to have them re-exam.

CONSULTED WITH

14. In addition to the departmental contacts listed on the cover sheet, list the names and affiliations of persons who were consulted during the development of this proposal.

Sal Baca, Deputy Commissioner, BPT  
Gerald James, Attorney-ACSA



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# CALIFORNIA STATE PERSONNEL BOARD

## SPECIFICATION

Schematic Code: XE11  
Class Code: 9744  
Established:  
Revised: --  
Title Changed: --

DEPUTY COMMISSIONER, BOARD OF PRISON TERMS (SAFETY)

### DEFINITION

Under general direction of the Board of Prison Terms, to sit as a member of a panel conducting term fixing, parole consideration, and parole revocation hearings for those felons committed to the custody of the Director of Corrections and make decisions in cases heard; review and schedule cases for hearings; review prisoner and parolee appeals regarding all Board of Prison Terms' decisions and Department of Corrections' decisions on good time credits and the length and conditions of parole; review the length and appropriateness of prison sentences imposed by the courts; maintain order and supervise the conduct of inmates and parolees; assume responsibility for custody; intervene in instances of disruptive or assaultive behavior; inspection of premises, and do other related work.

### TYPICAL TASKS

Participates in term fixing, parole consideration, and parole revocation hearing; fixes, advances, and rescinds parole dates; sits on special panels hearing those cases recommended for further action by the Parole and Community Services Division; reviews administrative procedures and regulations used within the Board of Prison Terms and recommends changes; identifies, investigates, and reports problems or situations relating to policies or procedures of the Department of Corrections as they relate to the Board of Prison Terms; independently conducts hearings on those cases assigned for such hearing by the Board of Prison Terms; conducts posthearing interviews when required; represents the Board of Prison Terms in case planning; guides the institution classification staff screening of cases for hearing by the Board of Prison Terms; reviews calendar, special proceedings, and disciplinary actions prior to the hearing; takes appropriate and emergency action for the Board of Prison Terms; participates in policy sessions of the Board of Prison Terms; represents the Board of Prison Terms in staff, administrative, and professional conferences; addresses groups on Board of Prison Terms' programs; makes determination hearings; maintains order and supervises the conduct of inmates and parolees; assumes responsibility for custody; intervenes in instances of disruptive or assaultive behavior; inspects premises; and makes special studies and reports.

MINIMUM QUALIFICATIONSEither I

Experience: Two years of experience in the California state service in custody, classification, treatment, or parole in a large penal, law enforcement, or correctional program or program for the administration of criminal justice in an administrative or staff capacity with major responsibility for policy formulation or procedure development, in a class comparable in level of responsibility to a Parole Administrator I, Adult Parole.

Or II

Experience: Three years of experience within the last five years in the California state service within the Board of Prison Terms or in the Department of Corrections in a class comparable in level of responsibility to a Parole Agent III, Adult Parole.

Or III

Experience: Three years of experience in the field of administrative or criminal law which included the presentation of evidence and examination of witnesses before a quasi-judicial administrative body, trial court, or in the conduct of quasi-judicial hearings in the capacity of hearing officer. (Experience in the California state service applied toward these requirements must include one year in a class comparable in level of responsibility to a Staff Counsel, Range C.) and

Education: Equivalent to graduation from college. (Additional qualifying experience may be substituted for up to two years of the required education on a year-for-year basis.)

Or IV

Experience: Three years of experience in the administrative position at the program manager level (first or second line supervisory experience is not qualifying) in the field of mental health, social work, law enforcement, or county probation with major responsibility for policy formulation or procedure development. (Experience in State service in these fields must have been performing the duties in a class comparable in level of responsibility to a Parole Administrator I, Adult Parole.) and

Education: Equivalent to graduation from college. (Additional qualifying experience may be substituted for up to two years of the required education on a year-for-year basis.)

KNOWLEDGE AND ABILITIES

Knowledge of: Purposes, activities, and responsibilities of the Board of Prison Terms and the Department of Corrections; laws and court decisions pertaining to the functions of the Board of Prison Terms and the Department of Corrections; principles, techniques, and trends in administrative due process of law; functions and procedures of the court system of the State of California and law enforcement agencies

as related to criminals; a manager's responsibility for promoting equal opportunity in hiring and employee development and promotion, and maintaining a work environment that is free of discrimination and harassment.

Ability to: Identify, investigate, and report on problems or situations relating to the policies or procedures of the Department of Corrections as they relate to the Board of Prison Terms; interpret and apply laws and court decisions pertaining to the functions of the Board of Prison Terms and the Department of Corrections and the rules of the Board of Prison Terms and Department of Corrections; evaluate sociological, psychological, psychiatric, and vocational findings and recommendations; extract from case records and medical records pertinent facts and data and present them in a clear, concise manner; conduct fair and impartial hearings and prepare appropriate findings; establish and maintain cooperative working relationships with private and community agencies, officials, and staff members; analyze situations and take effective action; gather, record, and evaluate pertinent and meaningful statistics and reports; communicate effectively; effectively promote equal opportunity in employment and maintain a work environment that is free of discrimination and harassment.

#### SPECIAL PERSONAL CHARACTERISTICS

Demonstrated interest in adult offenders; demonstrated understanding of and sympathy for the aims and policies of the Board of Prison Terms and the Department of Corrections; willingness to travel throughout the State; willingness to work long hours; tact; high moral standards; patience; and emotional stability.

#### SPECIAL PHYSICAL CHARACTERISTICS

Persons appointed to positions in this class must be reasonably expected to have and maintain sufficient strength, agility, and endurance to perform during stressful (physical, mental, and emotional) situations encountered on the job without compromising their health and well being or that of their fellow employees or that of inmates or parolees. Assignments during tour of duty may include sole responsibility for the supervision of inmates or parolees and/or the protection of personal and real property.

Successfully complete training required by the State as a condition precedent to appointment or completion of probation.

Satisfy background clearance requirement established by the State as a condition precedent to appointment.

pod/sks

AMENDED RESPONSE

Memorandum

Date: July 11, 2000

To: Walter Vaughn, Executive Officer  
State Personnel Board  
P.O. Box 944201  
Sacramento, CA 94244-2010

Subject: Response to State Personnel Board questions regarding Board Item for  
Deputy Commissioner, Board of Prison Terms (Safety)

The following information is provided in response to the questions raised by John Jackson of the State Personnel Board, relative to our Board Item Proposal for a new classification, "Deputy Commissioner, Board of Prison Terms (Safety)." It serves to amend my original response dated July 7, 2000 as it pertains to question number 1. It also serves to incorporate the Department of Personnel Administration's answers to the same questions as requested by the Board.

Number 1: *Per the provisions of Government Code Section 18717(a), as a hearing officer, what is the justification for meeting the Board approved safety category criteria? Whose responsibility is it to provide security at parole hearings and what is the nature of the security which is provided?*

**The State Personnel Board no longer has responsibility for determining whether classifications in Unit 2 satisfy the criteria for safety retirement. Amendments to Government Code sections 18717 and 19816.20 transferred that responsibility to the Department of Personnel Administration.**

Government Code section 18717, subd. (f) states: "[t]his section does not apply to state employees who are subject to Section 19816.20.

Government Code section 19816.20 applies to employees in bargaining units that have agreed to its provisions in a memorandum of understanding.

The California Association of Attorneys and Administrative Law Judges agreed to the provisions of Government Code section 19816.20 effective July 1, 1999. (see Unit 2 MOU section 14.5) Government Code section 19816.20, subd. (a) provides that the **Department of Personnel Administration shall determine which classifications meet the criteria for safety membership.** Section 19816.20 allows the Department of Personnel Administration to agree to provide safety membership by memorandum of understanding.

The Department of Personnel Administration agreed to safety retirement in the Unit 2 memorandum of understanding (eff. July 1, 1999) for a new classification of Deputy Commissioners if adopted by the State Personnel Board. The proposed new classification is intended to recognize a substantial change in duties and responsibilities. All future appointments will be to the new classification. BPT supports abolishment of the existing classification once there are no remaining incumbents. Not all incumbents wish to transfer to the new classification because of the impact on their benefits. BPT is therefore willing to assign differing duties that correspond to the employees' classification until the existing classification can be abolished. Those duties will reflect whether the Deputy Commissioner works or does not work in an institutional setting.

The Department of Personnel Administration agreed to safety retirement for the proposed classification to be used in an institutional setting for following reasons.

Criteria:

(1) *In addition to the defined scope of duties assigned to the class or position, the member's ongoing responsibility includes:*

(A) *The protection and safeguarding of the public and of property.*

The Board of Prison Terms is the State's adult parole board, and is responsible for preserving public safety by overseeing parole-related issues. The Board's Deputy Commissioners are responsible for the conduct of the administrative hearings and as such, perform mission critical duties related directly to the protection and safeguarding of the public and of property. These include serving as hearing officers at parole revocation hearings, the third panel member at life prisoner parole consideration hearings, and by performing other decision-making functions relating to prisoners and parolees.

(B) *The control or supervision of, or a regular, substantial contact with one of the following:*

- (i) *Inmates or youthful offenders in adult or youth correctional facilities.*
- (ii) *Patients in state mental facilities that house Penal Code offenders.*
- (iii) *Clients charged with a felony who are in a locked and controlled treatment facility of a developmental center.*

Deputy Commissioners are responsible for and conduct parole hearings in adult correctional facilities (jails and prisons) and state mental facilities. On the average, hearings are typically conducted approximately 6 hours per day, every day, in such institutions, with Deputy Commissioners travelling between institutions 2-3 times per week.

Participants at most hearing venues include: 1) the Deputy Commissioner conducting the hearing; 2) the parolee, and; 3) the unarmed Parole Agent I [District Hearing Agent (DHA) for the California Department of Corrections (CDC)]. In occasional or exceptional settings, depending on the institution or geographic county, there may be another unarmed peace officer in the room. For example, an unarmed deputy sheriff is generally present in the hearing room at Sacramento County's Rio Cosumnes Correctional Center, because it is a county facility. But not all county facilities will have a deputy sheriff in the room.

The DHA escorts witnesses and parolees to and from the hearing room, which is in the "locked" area of the facility. Parolees are not always in restraints in hearing rooms. The CDC and/or the local Sheriff offices have initial responsibility for security and make the initial determination for whether the parolee will attend the hearing in restraints. The Deputy Commissioner has final responsibility for security in the room and can order an increase or decrease in restraints. In this hearing setting, the Deputy Commissioners have final responsibility for the security and protection in the hearing room, and as such they have regular control and supervision and substantial contact with offenders in adult correctional facilities and mental facilities.

- (2) *The conditions of employment require that the member be capable of responding to emergency situations and provide a level of service to the public such that the safety of the public and of property is not jeopardized.*

The proposed specification for the Deputy Commissioner (Safety) class cites in the Typical Tasks section: "maintains order and supervises the conduct of inmates and parolees; assumes responsibility for custody, intervenes in instances of disruptive or assaultive behavior, inspects premises, makes special studies and reports."

The Special Physical Characteristics section states: "Persons appointed to positions in this class must be reasonably expected to have and maintain sufficient strength, agility, and endurance to perform during stressful (physical, mental, and emotional) situations encountered on the job without compromising their health and well being or that of their fellow employees or that of inmates or parolees. Assignments during tour of duty may include sole

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responsibility for the supervision of inmates or parolees and/or the protection of personal and real property.”

The Deputy Commissioners, Board of Prison Terms (Safety) will meet criteria (1)(A)(B) and (2) with establishment of this class. This proposal puts into effect the shared responsibility that will exist. Under this new responsibility, the Deputy Commissioners (Safety) will respond in accordance with local policy and directives regarding the necessary and appropriate measures to take when providing public protection and safeguarding property. As described below in response #4, both now and in the future, occasions increasingly occur that necessitate the timely intervention by the Deputy Commissioners to control and supervise parolees, prisoners and patients as well as provide for public safety and property protection.

The Deputy Commissioners (Safety) have responsibility for the parole revocation hearings. Their primary role is to serve as hearing officers at the hearings. They are also responsible for the oversight of the conduct of hearing participants, as it relates to the provision of public protection and safeguarding property.

Number 2: *Since there will be two Deputy Commissioner classifications, one safety and one non-safety, how will decisions be made as to which classification will be used when assigning Deputy Commissioners' responsibility for a parole hearing?*

The safety class will be used in institutional settings. The non-safety class will be used in non-institutional settings. The Board of Prison Terms has an elaborate scheduling process that rotates all incumbent Deputy Commissioners through the various assignments including the non-institutional setting (39%), such as performing screenings, appeals, discharge review, lifer review, decision review, Central Office Calendar, and special projects. The enactment of this classification proposal and change in the employment conditions of employees moving into it will create another parameter in that scheduling process. Those non-safety classified Deputies will have their assignments directed specifically within the (39%) non-institutional settings and such associated responsibilities. There is sufficient volume of work to accomplish this scheduling.

At least 61% of the current workload would currently fall into the Safety classification. This proportion will increase in proportion to the number of incumbents (%) that elect not to go into the safety responsibilities. For example, if 39% of the current Deputy Commissioners elect not to take the new responsibilities voluntarily, 61% of the current Deputy Commissioners would work 100% of the time in institutions. If 10% of the current Deputy Commissioners elect not to work the new Safety duties, and work 100% of time in non-institutional positions, the other 90% of the current Deputy Commissioners would work 71% full-time in institutions and 29% rotating into the non-institutional duties. In the event there are enough Deputy Commissioners who will take up the entire non-institutional workload (39%), then the Deputy Commissioners (Safety) would work the remaining 71% in institutions, 100% of the time.

Number 3: *The board item indicates that split-off decisions will be based upon the incumbents' willingness and ability to assume the new responsibilities. How will these determinations be made in an equitable and merit-based manner?*

Those employees that elect to move into the proposed classification will choose to do so voluntarily because they are willing to perform the required duties. There is not an equity issue, as all employees that are ready, willing and able to assume the duties and meet the conditions of employment can be reallocated to the new class.

Number 4: *What is the justification for adding the new duties to the class specification (supervising the conduct of inmates and parolees, intervening in instances of disruptive or assaultive behavior, etc.) and therefore, the justification for the need for a new classification?*

The justification for this classification proposal is to clarify the roles and responsibilities of the Deputy Commissioners of the Board of Prison Terms. Their working conditions (of employment) require them to be at prisons, jails, or mental hospitals 61% of their work time. Deputy Commissioners serve as unitary hearing panels, often in county or city jails, as well as in State prisons. Deputies are often in tactical command situations, needing to direct the activities of a parole agent, deputy sheriff, or correctional officer in providing custody and security. They are responsible for whether prisoners are restrained or not in hearings and for the level of custody measures that are taken. Where District Hearing Agents (Parole Agent) or deputy sheriffs perform multiple duties such as at county jails in particular, their attention and presence is often diverted from the hearing room leaving the Deputy Commissioner as the sole custody agent present. In those instances Deputy Commissioners have, in fact, become solely responsible for providing custody of the inmate/parolees and security of witnesses and others at hearings. With additional training in communication and violence prevention, Deputies can more proactively impact custody issues by applying conflict resolution techniques to recognize growing tensions, mitigate anger and divert verbal exchanges from becoming confrontational and hopefully avoiding the need for physical intervention. Failing in that, Deputies should be obligated by their class specification, duty statement and as a matter of necessity to physically intervene when assaultive behavior occurs.

In recent years more aggressive revocation action has been taken against career criminals, sexual predators and gang members. While the increase in the prisoner population drives up the number of hearings and provides increased funding for additional Deputies at BPT and local assistance to cities and counties, it is unlikely that the various jurisdictions consistently and proportionately increased their local jail staff. Currently over 80,000 parole screenings occur that result in 30,000 hearings being conducted annually. The Court (Armstrong) standard that inmate/parolees must "knowing and intelligently" respond to screening offers and participate in hearings is likely to significantly increase the number of hearings. All of these events contribute to the likelihood that even more hearings will be conducted where separate security/custody staff are unavailable. This situation can only be satisfactorily addressed by having hearing officers that are both prepared for and charged with custody responsibilities.



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Under this class proposal the custody and security responsibilities will be shared as a substantial, regular and ongoing part of their duties; thus, eliminating the confusion that has occurred in various incidents that jeopardize the safety of all involved. Neither custody staff (correctional officers, jailers, sheriffs deputies or parole agents) nor Deputy Commissioners have a clear understanding of the roles and responsibilities in responding to property damage and public safety incidents that arise in the institutional setting which amounts to the work environment for at least 61% of their duties.

While the SPB questions seem to focus only on the custody and security in hearings when applicable, this classification proposal applies to all custody and security circumstances applicable to these institutional settings. Not only does responsibility apply to the subject (prisoner, parolee, or patient) of the hearings, but to all of the other prisoners, parolees, or patients in the general populations of those respective institutions. These roles and responsibilities are not isolated to the hearing process, as the Deputy Commissioners are typically not escorted to or from the hearing locations and are in regular and ongoing contact with the inmate and patient general population (in addition to the subjects of the hearings). Hearings are generally conducted in the "locked" areas of the institutions. This occurs in the various jails, prisons, and mental hospitals and incumbents may be expected to respond to whatever emergencies they may observe.

Under this classification proposal the roles and responsibilities will be clearly understood to encompass the protection and safeguarding of the public and property and the control and supervision of inmates, parolees or patients.

*Number 5: Under the "Special Physical Characteristics" section of the proposed new class spec, is included reference to successfully completing required training and satisfying background clearance requirements. Are these considered minimum qualifications and if so, what is the justification for including them under "Special Physical Characteristics"? What is the specific nature and purpose of the training and the background investigation and what impact will they have on an individual's potential for success in an examination and opportunity for an appointment?*

For examination purposes, the Special Physical Characteristics are not considered minimum qualifications as they are also not for other department-specific classes, such as Prison Industries Manager (General) and Prison Industries Administrator. However, candidates will be subject to approved medical examination reports, since they will have duties or conditions of employment that include responsibility for custody, control or direct contact with incarcerated or institutionalized individuals.

New Deputies initially undergo training during their probationary period focused on serving as a hearing officer, learning the applicable codes and regulations, the methods essential to maintaining safety of persons and property, and techniques for supervising the conduct of inmates and parolees. Should an appointee prove incapable of learning and applying Board of Prison Terms regulations and procedures or exercising the ability to

perform the duties of the class nor meet the Board's legal responsibility for protecting the public, appropriate personnel action would apply.

Background checks will continue to be used to discern any prior criminal record. Current procedures will not change that include fingerprinting and supplemental application questionnaires for non-peace officers.

Number 6: *How will it be determined as to whether an individual possesses the physical requirements and at what point will a determination be made?*

As in the case of Industrial Supervisors employed by Prison Industry Authority, no physical fitness test is administered. Appointees are subject to an approved medical examination report as prescribed in Section 375.3 of the Personnel Management Policy and Procedures Manual, Paragraph 3b, "Responsibility for custody, control or direct contact with incarcerated or institutionalized individuals." Their physical ability to perform such duties will be documented on Medical Examination Report (STD 610). Should such conditions call their ability into question, the BPT will refer the examination report to the Medical Officer at SPB. Should conditions arise after employment, appropriate personnel procedures would be followed to determine the continued suitability of the subject employee. Employees who are "subject to proper placement" will be assigned to a non-institutional assignment.

If you require additional information or clarification, don't hesitate to contact me at 445-1539.

  
LOUIE DiNINNI  
Executive Officer

The Department of Personnel Administration joins in this response and respectfully urges the State Personnel Board to approve the new classification as proposed.

  
MARTY MORGENSTERN  
Director

Cc: John Jackson, SPB  
Pat Embly, SPB ✓  
Debbie Yue, DPA  
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June 30, 2000

Gary M. Messing  
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Walter Vaughn, Executive Officer  
State Personnel Board  
801 Capitol Avenue  
Sacramento, CA 95814

**Re: Deputy Commissioner, Board of Prison Terms (Safety Retirement)**

Dear Mr. Vaughn:

This firm represents the Association of California State Attorneys and Administrative Law Judges ("ACSA"). We are responding to an e-mail to DPA dated June 9, 2000 requesting answers to various questions regarding the above matter. This e-mail was sent to DPA on a Friday afternoon requesting a response by the following Wednesday. For some reason we were never contacted directly by the SPB, and only became aware of the request after the stated response time. Unfortunately, action on this issue has been postponed by the SPB. Nonetheless, on behalf of ACSA, please be advised of the following questions and responses:

1. Per the provisions of Government Code Section 18717(a), as a hearing officer, what is the justification for meeting the Board approved safety category criteria? Whose responsibility is it to provide security at parole hearings and what is the nature of the security which is provided:

**RESPONSE:**

The scope of supervision over inmates/parolees has become more focused on public safety and the protection of property. Deputy Commissioners have regular and substantial contact with inmates/parolees in adult facilities. They have a primary responsibility in the supervision and custody of these inmates/parolees while conducting hearings.

**RECEIVED**

**JUL 3 2000**

BY  
EXECUTIVE OFFICE

Walter Vaughn, Executive Officer

State Personnel Board

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The issue of supervision and custody has become a high priority in the scope of Deputy Commissioner duties. Deputy Commissioners make decisions during the course of hearings that affect the liberty interests of parolees/inmates and such decisions result in instances of disruptive behavior that require intervention to protect the safety of participants in such hearings.

It is virtually impossible for Deputy Commissioners to perform their role without actively assisting in the security or custody responsibilities that arise during hearings. Not actively participating has the potential for allowing dangerous situations to escalate beyond the hearing environment. Witnesses, both civilian and law enforcement, expect and depend on Deputy Commissioners to control the hearing rooms. In maintaining that needed control Deputy Commissioners are providing direct public safety in the performance of their duties in the presence of an increasingly violent and complex work environment. It is time to recognize their performance of safety duties that puts them at risk continuously; that is the basis for justification of approving safety retirement for Deputy Commissioners.

The concerns regarding supervision, custody and safety of Deputy Commissioners and hearing participants have become more pronounced since the reduction of hearing panels from two Deputy Commissioners to one in 1992. Deputy Commissioners have daily contact with inmates, parolees, attorneys, medical staff, correctional administrators, police, victims, District attorneys and parolee's relatives. Deputy Commissioners conduct hearings for parolees who are sexual predators, gang members, mentally disordered sex offenders, serious drug violators and life term prisoners committed for 1<sup>st</sup> and 2<sup>nd</sup> degree murder cases. These hearings are conducted at 33 prisons, 79 county jails, 71 parole offices and 4 state hospitals.

There is an increased need to respond to emergency situations and assaultive incidents. Deputy Commissioners have to analyze and interpret non-verbal communications and respond to potentially hostile or dangerous situations that are adversarial in nature.

Deputy Commissioner responsibility for security has become more critical at hearings, especially when Correctional Officers, Sheriffs Deputies or District Hearing Agents leave the hearing room to summon witnesses or prepare other parolees for their next hearings. Deputy Commissioners are then left alone with the parolee/inmate. As the inmate/parolee population continues to increase (parolee population is at 110, 000; prison population-116,000), the number of hearings increases as well (42,000 estimated for 2000-2001). However, the security staff doesn't increase proportionately and there is

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thinner coverage of hearing rooms; thus leaving Deputy Commissioners with the assumed responsibility of security, control and supervision of parolees in hearing rooms.

Deputy Commissioners have the lead responsibility for security in hearing rooms. The secondary security responsibility is given to correctional officers or deputy sheriffs if assigned to a hearing room; however, coverage is not provided in each room throughout the state.

2. Since there will be two Deputy Commissioner classifications, one safety and one non-safety, how will decisions be made as to which classification will be used when assigning Deputy Commissioners responsibility for a parole hearing?

RESPONSE:

Management at the Board of Prison Terms will note which Deputy Commissioners elected to enroll in safety retirement. They will be scheduled to conduct hearings with parolees/inmates. The BPT has a scheduling unit that assigns Deputy Commissioners throughout the state. Deputy Commissioners who elect not to participate in safety retirement will be given a choice to perform duties without parolee/inmate contact.

3. The board item indicates that split-off decisions will be based upon the incumbents' willingness and ability to assume the new responsibilities. How will these determinations be made in an equitable and merit-based manner?

RESPONSE:

Management at the Board of Prison Terms will monitor and oversee the list of Deputy Commissioners who elected to participate in Safety retirement and who will perform the new classification duties. These Deputy Commissioners will be grandfathered into the new classification and should not have to test for the new classification.

4. What is the justification for adding the new duties to the class specification (supervising the conduct of inmates and parolees, intervening in instances of disruptive or assaultive behavior, etc.); and therefore, the justification for the need for a new classification?

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The justification for adding new duties to the class specification includes the following:

- Revocation hearing panels went from two Deputy Commissioners to one Deputy Commissioner in 1992. This increased the vulnerability of Deputy Commissioners to become the focus of threats and assault by parolees/inmates.
- Deputy Commissioners have had the responsibility of command and control of tactical situations in hearing rooms throughout the history of conducting hearings. This has intensified even more so since 1992 due to the hearing panel reduction.
- Deputy Commissioners are responsible for the parolee/inmate restraint and custody status when they are in the hearing room.
- The other custody staff in the hearing room include either a Correctional Officer or District Hearing Agent in prison settings; or a Deputy Sheriff in county jails. Frequently these staff will leave Deputy Commissioners alone with the parolee in a hearing room when they have to summon witnesses, or secure other parolees/inmates for a subsequent hearing.
- The frequency of assaultive incidents has increased against Deputy Commissioners. Records of such assaults are kept by the Board of Prison Terms Investigative Unit. There are recorded incidents dating back from 1971 to 1999. Incidents range from parolees kicking over tables to the stabbing of the BPT chairman and a deputy district attorney at San Quentin in 1980.
- In 1995 the legislature, recognizing that Deputy Commissioners had been subjected to years of threats and assaults and needed added safety and protection, included Deputy Commissioners in Section 76 of the Penal Code- "Threatening the Life of or Serious Bodily Harm to Public Official, or Member of Immediate Family". At least two parolees have received new prison sentences due to assaultive behavior against Deputy Commissioners.

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- In a report issued by the BPT Investigative Unit on 1/20/00, titled "Year End Summary of Workplace Violent Incidents", it was pointed out that there was a tripling of reported cases of assaults against Deputy Commissioners as compared to the previous year.

5. Under the "Special Physical Characteristics" section of the proposed new class spec, is included reference to successfully completing required training and satisfying background clearance requirements. Are these considered minimum qualifications and if so, what is the justification for including them under "Special Physical Characteristics"? What is the specific nature and purpose of the training and the background investigation and what impact will they have on an individual's potential for success in an examination and opportunity for an appointment?

RESPONSE:

The question relating to "Special Physical Characteristics" should be answered by the management of the BPT since they included this section. However, this language is the same language used by psychologists and social workers when they secured safety retirement. We discussed their contract with a labor consultant for unit 16, 19, Richard Sharp-1-800 698 6553. According to him, the language encompassed what they considered to be minimum qualifications based on the background of the psychologists, doctors, social workers who had experience as counselors or training in conflict resolution, crisis intervention, anger management and control training. They passed medical examinations to get their jobs and once cleared they showed a willingness and readiness to engage in contacts with parolees/inmates. Their duties and minimum qualifications called for custody responsibility and the special characteristics identified in their class specification which included: maintaining sufficient strength, agility and endurance to perform during stressful situations without compromising their or fellow employees health. They maintain their health and use the skills they have in their line of work to perform their safety classification duties.

Deputy Commissioners generally come from law enforcement backgrounds where such training has already been provided to them. The Board of Prison Terms has provided training in controlling aggressive parolee/inmates in hearing situations and this could be institutionalized in training proscribed for new Deputy Commissioners. Additional training in communication and violence prevention can proactively impact custody conflict situations to reduce tension, mitigate anger and diminish verbal assaults directed at Deputy Commissioners. If these efforts are not successful, then the Deputy Commissioner will physically intervene when assaultive behavior occurs.



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As to the specific nature of the background investigation required for this classification, we defer to BPT management.

As to the impact on applicant success in the examination process, in lieu of the new requirements in the class, we believe that the impact would be minimal since many of the current applicants already come from law enforcement or correctional backgrounds that had safety retirement. This classification will enhance the candidate pool since safety retirement will be an incentive for Department of Corrections candidates to apply. Applicants from other related criminal justice backgrounds may already possess the requisite requirements of the new classification criteria particularly if they have prior employment in social work, police, parole, probation or in judicial/legal functions in which they conducted hearings.

6. How will it be determined as to whether an individual possesses the physical requirements and at what point will a determination be made?

RESPONSE:

As to the physical requirements, a candidate will need to successfully complete a medical examination to qualify for the classification. The classification doesn't require extra physical abilities, other than a willingness and readiness to perform the classification requirements. Safety retirement members in Unit 16 and 19, according to Richard Sharp, include members in wheelchairs and some who are partially blind but still have the physical capacity to perform their duties under safety retirement system criteria.

Very truly yours,

CARROLL, BURDICK & McDONOUGH LLP



Gary M. Messing

GMM:jmm

cc: Rick Tullis, President ACSA  
Sal Baca, Director, ACSA  
Debbie Yue, DPA  
Linda Buzzini, DPA

**Compendium of Assaults/Incidents/Threats  
Involving Parole Board Staff**

**1970**

11-18-70 - Intelligence reports/warning indicate a 4 person "Hit Squad" was targeting parole board staff, CDC officials and their families.

**1971**

2-26-71 - SQ - Inmate at an ISL hearing kicked over a chair and had to be restrained by CDC staff and the Adult Authority Hearing Representative.

6-3-71 - Intelligence reports/warnings that Black Panther Party members plan to bomb the Adult Authority office. The "Weathermen" took credit for bombing state offices in Sacramento, San Francisco and San Mateo counties in 9/91. The Sacramento site was Office Building #8, the HQs of both CDC and the Adult Authority.

9-14-71 - KNXT reported a plot to kidnap Adult Authority Members at CIM for a purported hostage swap involving Angela Davis and Ruchell Magee in Marin County.

10-18-71 - Adult Authority Member Brown reported strangers inquiring re: his residence and taking photos of his home.

**1972**

5-11-72 - Intelligence reports/warning re: a plot to assassinate Adult Authority Members and Hearing Representatives.

7-8-72 - CMC - Death threats were made by an inmate to CDC staff and an Adult Authority Hearing Representative.

9-25-72 - State police alert the Adult Authority re: "letter bomb" procedures.

11-5-72 - Intelligence/warning re: a purported assassination plot involving an Adult Authority Member or Representative.

11-16-72 - SQ - An inmate had to be physically restrained by the Adult Authority Hearing Representative and CDC staff during a hearing.

1973

1-22-73 - Intelligence report/warning re: "Venceremos" organization plot to kidnap Adult Authority Members.

2-16-73 - Intelligence report/warning re: a "contract" on the life of Adult Authority Member Dan Lopez.

4-13-73 - Crittenden Center Half-Way House, Region II - A room in which hearings were to be conducted was found to have bullet holes in windows, inflicted the night before in a free-way drive-by shooting.

4-18-73 - SQ - Death threats made to Adult Authority Representatives Lorian and Crow. Inmate had to be physically removed from the room by all staff present.

4-27-73 - Crittenden Center - Parolee scheduled for a hearing in the PM was found with a concealed knife in the AM.

7-30-73 - Folsom - Inmate tried to overturn a table on Adult Authority Hearing Representative - all staff present had to subdue the inmate.

9-12-73 - CMF - Escapee noted to have made threats to Adult Authority staff and CDC staff, prior to his escape.

10-15-73 - CIM - Death threats made re: Adult Authority Chairman Henry Kerr, AA Members, a judge and a police chief.

10-24-73 - CMF - Death threats made to Adult Authority Panel members.

12-3-73 - State Police update re: letter bombs.

1974

2-2-74 - Informant information within CDC indicated Muslim Inmates at SQ were threatening acts against Adult Authority Members and Representatives unless "more dates were given."

3-28-74- SQ - Bomb threat called in re: SQ Administration Building. Adult Authority hearings were suspended while building was cleared and searched.

4-18-74 - An inmate lost control and verbally threatened Representatives Lorian and Crow. He had to be forcibly removed from the room by staff.

4-19-74 - Intelligence reports/warning - SQ - Inmates reportedly had the home addresses and telephone numbers of Adult Authority Hearing Representatives Loriano and Hutton.

9-23-74 - Special Service Unit of CDC reported the interception of a threat to kill Adult Authority staff who kept a certain inmate incarcerated.

**1979**

9-17-79 - Verbal and written threats were made to Hearing Representative Hutton and former Adult Authority Member Edman.

**1980**

11-6-80 - The Chairman of the Board of Prison Terms was stabbed by an inmate at San Quentin during a lifer hearing. Ray Brown was stabbed in the arm as he protected a Deputy District Attorney from Los Angeles County.

11-19-80 - An inmate verbally threatened to kill Representatives Warren Wade and Cleo Brown.

**1984**

7-23-84 - A revoked parolee threatened 3 hearing officers and a parole agent.

8-27-84 - Deputy Commissioners Francisco and Patterson were threatened. The parolee had to be removed from the room.

**1985**

2-8-85 - At the conclusion of a revocation hearing the parolee become hostile and assaultive. Seven staff were involved in subduing the parolee including Deputy Commissioner Hoover and Deputy Commissioner Francisco. One of the parole agents was injured. It took staff 13 minutes to respond to the scene.

2-21-85 - Deputy Commissioners Crow and Brooks were threatened by a man with reported gang connections.

2-21-85 - At the conclusion of a hearing before Deputy Commissioner Boulton and Deputy Commissioner Francisco the parolee threatened to kill the panel. The parolee also threatened to kill one of the adverse witnesses.

2-22-85 - Report of a threat to panel members when the parolee was released from prison.

3-22-85 - Hearing panel injured when a parolee pushed the table over on them.

7-12-85 - A parolee sent a letter to BPT HQs in Sacramento containing a razor blade.

8-30-85 - Outburst in a hearing room in which the inmate hurled a chair around the room several times before being subdued.

9-20-85 - A parolee was found to have a large nail on his person before entering the hearing room.

10-16-85 - A letter containing implied threats directed toward a Board member was received after the denial of release for a Manson Family member.

#### 1986

9-15-86 - Two parole agents and BPT Deputy Commissioner James Hoover were injured while attempting to control an enraged parolee.

9-22-86 - Threats made to panel members by an inmate committed to CDC for ADW.

#### 1987

1-20-87 - Deputy Commissioners Anthony Smith, Jean Briscoe and parole agents had to subdue a parolee after he grabbed the tape recorder and threw it to the floor. A parole agent was injured and had his clothing torn.

2-18-87 - Two female Deputy Commissioners were followed out to their cars in the parking lot of the jail in San Diego by two men who had testified in behalf of the parolee at a revocation hearing.

3-26-87 - Deputy Commissioner Coronado was struck in the face by a parolee swinging a collection of documents.

4-21-87 - CMF inmate made a verbal threat to kill Deputy Commissioners Francisco and Coronado.

4-26-87 - Parolee verbally stated that he was going to kill the Deputy Commissioner that returned him to prison.

4-26-87 - A parolee physically battered a Deputy Commissioner at the conclusion of a hearing with folded up documents.

5-5-87 - Deputy Commissioners Cashdollar and Coronado were threatened by an inmate while he was being forcibly removed from the hearing room at CMF.

5-6-87 - Verbal threat to Deputy Commissioners by a parolee who had to be removed from the hearing room.

6-23-87 - The wife of a parolee who had just had his hearing found out who the hearing panel was. She then followed Deputy Commissioner Lander and Deputy Commissioner Francisco to the parking structure and confronted them.

7-2-87 - Parolee made verbal threats to Deputy Commissioner Crow Deputy Commissioner and Francisco after having revocation hearing. The treats involved bodily injury to the Deputy Commissioners if he ever seen them in the community.

1988

1-15-88 - Deputy Commissioners Francisco and Elliott were threatened repeatedly at the conclusion of a revocation extension hearing.

1-15-88 - The BPT was advised of a possible assassination plot by gang members targeting BPT staff.

2-17-88 - Deputy Commissioners Carter and Cox were verbally threatened by a parolee who also made threatening movements until he was subdued by San Diego Jail staff.

11-2-88 - An inmate threatened to spit upon Deputy Commissioners Luttrell and Chew at CMF.

1989

1-6-89 - An inmate became threatening and abusive toward Deputy Commissioners Monica Smith and Percy Crow and had to be removed from the hearing room at CIM-East.

1-11-89 - CIM-East - An inmate who rejected his screening offer announce his intent to kill BPT staff.

1-26-89 - CIM-East - An parolee threw a fire extinguisher through a window of the building where BPT staff were engaged in face-to-face screening interviews with parolees pending revocation.

5-30-89 - CIM - A CDC "Board Room Officer" assigned to work with the BPT was threatened by an inmate as he entered the hearing room.

1990

3-15-90 - LACJ - Female parolee attacked two deputies in the hearing room at the women's facility after threatening the two hearing officers.

4-4-90 - CIM-East - An HIV positive inmate had to be removed from the hearing room due to his threatening behavior. The same inmate had been forcibly removed from his hearing on 3-27-90 for similar behavior.

6-28-90 - Deputy Commissioners Ramirez and Francisco received death threats while conducting a parole revocation hearing in the Santa Clara County Jail.

7-2-90 - Riverside County Courthouse - Deputy Commissioners McReynolds and Neto were confronted by an angry parolee at the conclusion of the hearing. Two deputies were injured forcibly removing the parolee from the room.

7-30-90 - CMF - An inmate became confrontive in the hearing being conducted by Deputy Commissioners Connolly and Francisco. The inmate spat upon DC Connolly. The inmate was later determined to be HIV positive.

10-12-90 - CIM-East - Deputy Commissioner Cleo Brown and his partner were confronted by a belligerent parolee. Three correctional staff were injured in forcibly removing the parolee from the hearing room.

10-19-90 - CIM-East - Deputy Commissioners Cantu and McReynolds were confronted by a threatening parolee who was later forcibly removed from the room by revocation staff.

11-1-90 - Deputy Commissioners Macahilig and Spencer were confronted by a parolee at CIM-East. A correctional officer was injured while forcibly removing the parolee from the hearing site.

11-3-90 - A belligerent, aggressive parolee had to be removed from the hearing room, and the revocation trailer itself after challenging the two Deputy Commissioners conducting the hearing. A Correctional Officer received an injury in the encounter.

11-29-90 - BPT Executive Officer Ted Rich received a telephone on his answering machine at his residence. The call placed to his unlisted home number was of a threatening nature and was believed to have been placed by an inmate in the local county jail who was also facing federal charges.

12-20-90 - Corcoran State Prison - Deputy Commissioners Washington and Plier were attacked by a revoked parolee at a parole violation extension hearing. The parolee attempted to turn the table over on the two hearing officers. It took 4 correctional officers to restrain the man.

#### 1991

6-17-91 - CMF-M - Deputy Commissioners Francisco and Macomber had a parolee forcibly removed from the hearing room after the parolee spat upon DC Francisco. The spittle hit Francisco in the face and body.

11-15-91 - Marin County Jail - Deputy Commissioners Trott and Claymore were assaulted by a parolee who kicked a table onto them. The parolee had to be removed from the hearing room by force.



1992

1-29-92 - CMC-East - Deputy Commissioners Mackenberg and McCuen had a disruptive parolee removed from the hearing room at which time the parolee boastfully relinquished a prison-made stabbing dagger. It was later discovered that a prison-made slashing weapon fitted with a razor blade had been removed from the parolee just prior to the hearing.

9-17-92 - CIM-East - Deputy Commissioners Cleo Brown and Fernando Vasquez were assaulted by a parolee who pushed the table over onto them. Three correctional staff forcibly restrained the parolee. One of the officers received a broken bone in his foot.

11-11-92 - LACJ - Deputy Commissioner Mackenberg, police officers and parole staff were threatened with death by a parolee upon his eventual release back to the community.

11-18-92 - The BPT was notified, along with all judges and law enforcement agencies by the DOJ, that the Medellin Cartel in Colombia was plotting retaliation for the death of one of their members while incarcerated in New York.

11-19-92 - LACJ - Deputy Commissioner Mackenberg was attacked by a parolee at the conclusion of the hearing. The parolee picked up a chair and swung it at Mackenberg. He also tried to kick him while he was being restrained. Later the parolee threatened to kill him in the future.

11-19-92 - Deputy Commissioner Pfler received a death threat from a parolee identified as "EME" at the conclusion of a Parole Revocation Hearing in the Kern County Jail.

12-18-92 - Deputy Commissioner Washington and deputies were spat upon by an HIV positive parolee in a parole revocation hearing in the LACJ. During the struggle one of the deputies was bitten by the parolee.

12-23-92 - LACJ - During two separate hearings this date Deputy Commissioner Baca was threatened by parolees. The latter threatened to kill DC Baca if they ever met "on the streets." The parolee stated . . . "Hear me mother fucker, I'm going to get you. If I ever see you outside, I'll get you, the last thing I do is to kill you."

12-24-92 - Deputy Commissioner Pfler - Fresno County Jail - Was threatened by a parolee who indicated that others may actually carry out the act.

12-28-92 - A disruptive parolee was ordered removed from the hearing room at CCI-Tehachapi by Deputy Commissioner Vasquez. It took 3 correctional staff to forcibly remove the parolee.

#### 1993

1-19-93 - Deputy Commissioner Pliler received an anonymous telephone call at home in which he was threatened.

8-16-93 - LACJ - Deputy Commissioner Vasquez - Parolee tried to overturn the table onto the hearing officer at the end of the hearing.

#### 1994

11-3-94 - Deputy Commissioner Castro - Parolee made threats to adverse witness in the presence of the hearing officer. Parolee had to be removed by force from the room.

12-21-94 - Deputy Commissioner Schaufel was spat upon by a parolee in a revocation hearing.

#### 1995

3-9-95 - San Mateo County Jail - Deputy Commissioner Trott was assaulted by a parolee who kicked a waste basket filled with trash, striking him in the head.

11-20-95 - Folsom - Parolee had to be removed from the hearing room by force. Deputy Commissioner Bybee had to restrain his legs to prevent CDC staff from being kicked.

11-20-95 - San Diego County Jail - A parolee facing parole revocation proceedings began exposing himself in the presence of the female Deputy Commissioner and other staff. He was forcibly removed from the room before his behavior could escalate.

#### 1996

4-3-96 - Alameda County Jail - Deputy Commissioner Schaufel received threats directed at his family members. Parolee was prosecuted.

8-29-96 - Deputy Commissioner Vasquez was assaulted by a 300 pound parolee. 5 CDC staff were also injured. The parolee was convicted of violation of PC 4501.5 and was committed to prison on a new term.

11-26-96 - Deputy Commissioner Patterson - CTF - Threatened with death by a revoked parolee in a Parole Violation Extension Hearing.

**1997**

1-27-97 - LACJ - Deputy Commissioner Baca - Parolee threatened a Deputy Sheriff and had to be taken from the hearing room by force.

3-21-97 - CDC Alert re: "Nazi Lowriders" and "Aryan Brotherhood" threats to assault CDC and BPT staff as part of new members' initiation.

4-10-97 - CIM-East - Deputy Commissioner May - Berserk inmate overturned a table and broke a chair in the hearing room.

5-14-97 - Parolee in custody pending revocation and criminal prosecution was able to secure Deputy Commissioner Baca's home telephone number and made numerous telephone calls to his residence concerning his criminal case and his status with the Board of Prison Terms.

6-12-97 - (PBSP) After Deputy Commissioner Webb found good cause at a parole revocation extension hearing the parolee verbally threatened "to kill" Deputy Commissioner Webb, a Correctional Officer, and a witness to the case.